



CHILDHOOD LEAD POISONING PREVENTION FEE ANNOTATIONS

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ARCHITECTURAL COATING

Aerosol Paint Can

A company that manufactures and fills aerosol paint cans is a feepayer under the statute. Although the company claimed that it should not be classified as a distributor of architectural coatings because of the size of the can, the statute does not distinguish products based on the size or type of the container. Although a small aerosol paint can would not usually be considered for larger jobs for stationary structures, such cans are used for smaller jobs. 08/11/94.

Contractor

A contractor that applies an architectural coating to real property, but does not manufacture or distribute the coating, is not subject to the Childhood Lead Poisoning Prevention Fee. 11/14/95.

Excluded Coatings

Varnishes, lacquers, concrete curing compounds, waterproof sealers, stains or roofing coatings which have not generally contained significant amounts of lead are not within the definition of architectural coatings and are not subject to the fee. 1/27/98. (M99-1).

BANKRUPTCY

A corporation filed a petition in the bankruptcy court for Chapter 11 reorganization. The reorganization plan was effective January 1, 1993. All pre-petition tax claims by the BOE were settled. The reorganized corporation sought a refund of fees paid in April of 1993 and 1994 based on the fact that it was not in existence in 1991 and 1992. The fee is payable each year based on the activities of the year before the previous year. Thus, the 1993 payment was based on the activities of 1991, and the 1994 payment was based on the activity of 1992.

The corporation was not liable for the pre-petition tax claims because they had been settled. However, the reorganized corporation was liable for payment of the fee in April of 1994 and thereafter, which was the post-petition, post-confirmation period.

The time which was questionable was the post-petition, pre-confirmation period between January of 1990 and January of 1992. Generally, taxes and fees which are incurred by the bankrupt estate fall within the definition of "administrative expenses" and, as such, are to be paid by the trustee or debtor-in-possession of the estate, 11 U.S.C.A., 503(b)(1)(B). Based on an analysis of case law, it was determined that the fees at issue fall within the definition of "administrative expenses" and that the corporation was not due a refund on the amounts previously self-assessed and paid. 4/24/95.

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Annotation Title

Edition

Are Metal Spraying 3/17/95.....

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